

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

-----  
for August 20, 2003 PLANNING COMMISSION MEETING

**P.A.S.:** Miscellaneous #03009 & 03010

**PROPOSAL:** To amend the language in the Subdivision Ordinance and the Design Standards in order to allow the Planning Commission to approve waiver requests, and to allow the Planning Director to sign the approval certificate on final plats.

**CONCLUSION:** The Planning Commission should have the authority to approve modifications to the regulations and standards that are found to meet the intent of the codes and has City Staff support. The proposed new language was approved by the Planning Commission at their August 6, 2003 meeting and is simply being relocated to more appropriate sections of the code at the request of the Law Department.

The amendment to permit the Planning Director to sign the approval certificate is related to another amendment approved by the Planning Commission on August 6, 2003 that gave the Planning Director authority to approve final plats.

<b><u>RECOMMENDATION:</u></b>
-------------------------------

Approval
----------

### **LEGAL DESCRIPTION:**

Section 26.19.020 and 26.31.010 of the Land Subdivision Ord of Title 26 of the LMC  
Title 1, Chapter 1.00, Sections 2.1 and 2.2 of the City of Lincoln Design Standards

### **ANALYSIS:**

1. There are situations where waivers and modifications to the rules and regulations are justified and the City staff finds the waivers meet the intent of the rules and regulations. In those situations one public hearing by the Planning Commission should be sufficient for the public to voice their concerns. The amendment gives the applicant or any aggrieved person the opportunity to appeal the Planning Commission's decision to the City Council. In those situations where the Planning Commission approves the waiver but the City staff finds that it does not meet the intent of the regulations, then that request should be considered by the City Council.

2. Waiver requests will still require a public hearing with this amendment, but the time period is reduced in most cases.
3. The amendment to 26.19.020 was intended to be included in the packet for Miscellaneous #03005 involving procedures and fees, which the Planning Commission approved on August 6, 2003. The amendment authorizes the Planning Director to sign the approval certificate.

Attached is the proposed language in legislative form.

Prepared by:

-----  
Ray Hill Planner

**DATE:** August 7, 2003

**APPLICANT:**

Director of Planning Marvin S. Krout

**CONTACT:**

Ray Hill, Planning Department  
555 South 10<sup>th</sup> Street  
Lincoln, Ne 68508  
441-6371, rhill@ci.lincoln.ne.us

**26.19.020 Certificates and Acknowledgments on Final Plat.**

The final plat shall show the following:

- (a) Owners' acknowledgment and offer of dedication, if any;
- (b) Certificate of the surveyor;
- (c) Certificate of approval by the Planning ~~Commission~~ Director and acceptance of the offer of dedication;
- (d) All affidavits, certificates, acknowledgments, endorsements, dedications, and notarial seals as are required by law and the provisions of this title, shall be as approved by the City Attorney.

03-

Introduce:

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Section 26.31.010 of the Lincoln Municipal Code  
2 to modify the procedure for granting modifications of subdivision requirements and providing  
3 an appeal process therefor; and repealing Section 26.31.010 of the Lincoln Municipal Code  
4 as hitherto existing.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That Section 26.31.010 of the Lincoln Municipal Code be amended  
7 to read as follows:

8 **26.31.010 Modification of Requirements.**

9 Whenever ~~the tract to be subdivided~~ a lot, tract, or parcel of land is of such unusual  
10 size or shape or is surrounded by such development or unusual condition that the strict  
11 application of the requirements contained in these regulations would result in actual  
12 difficulties or substantial hardship or injustice, the ~~Council~~ subdivider may request a  
13 modification of such requirements. Such request shall be filed with the Planning Director and  
14 shall set forth the specific modification requested and all supporting reasons and  
15 documentation as to why the modification should be granted, how the public welfare will be  
16 preserved, and why the modification will not detract from the intent and spirit of these  
17 regulations. The Director shall distribute copies of the requested modification and the  
18 subdivider's statement and accompanying data to other City departments and governmental  
19 agencies who are directly concerned with the proposed modification. Each department or  
20 governmental agency which is directly concerned with the proposed modification shall, within

1 fifteen days from receipt of a copy of the requested modification, file with the Planning  
2 Director notice of its approval of the requested modification or a report stating why the  
3 modification should not be granted. Within thirty days from the filing of the request for  
4 modification, the Planning Director shall notify the subdivider in writing of the recommended  
5 approval or disapproval of the request. The request for modification will then be scheduled  
6 on the Planning Commission agenda for public hearing and action as provided below.

7 (a) (1) If the requested modification is recommended for approval by the  
8 Planning Director, the Planning Commission, after holding at least one public hearing on the  
9 requested modification, may vary or modify such requirements so that the subdivider may  
10 develop the property land in a reasonable manner, but so that at the same time, the public  
11 welfare and interests of the City and surrounding area are protected and the general intent and  
12 spirit of these regulations are preserved.

13 (2) Any aggrieved person may appeal any action of the Planning  
14 Commission to the City Council by filing a notice of appeal with the City Clerk within fourteen  
15 days following the action of the Planning Commission. Upon receipt of the appeal by the City  
16 Council, the Council shall hold a public hearing thereon within thirty days from the date of  
17 appeal. Notice of the public hearing shall be given as provided in Section 26.11.036. The City  
18 Council may, after public hearing in conformity with the provisions of this title, reverse or  
19 affirm, wholly or partially, or may modify the action of the Planning Commission appealed  
20 from.

21 (b) If the Planning Director recommends denial of the requested modification, the  
22 Planning Commission shall hold a public hearing on such request and make a report and

1 recommendation to the City Council regarding whether the modification should be granted  
2 or denied and, if approved, how the public welfare will be preserved and why the  
3 modification, if granted, will not detract from the intent and spirit of these regulations. The  
4 findings of the Commission after public hearing shall be submitted to the City Clerk within  
5 seven days from the action by the Planning Commission. After submittal of the findings of the  
6 Planning Commission to the City Clerk, the City Clerk shall cause the requested modification  
7 to be placed on the agenda of the City Council for approval by the City Council by resolution.  
8 The City Council, after holding at least one public hearing on the requested modification, may  
9 modify such requirements so that the subdivider may develop the land in a reasonable  
10 manner, but so that at the same time, the public welfare and interests of the City and  
11 surrounding area are protected and the general intent and spirit of these regulations are  
12 preserved.

13 ~~Any such proposed modification of the requirements contained in these regulations~~  
14 ~~shall first be submitted to the Planning Commission for its recommendations and report. The~~  
15 ~~Planning Commission shall hold at least one public hearing before submitting its recommen-~~  
16 ~~dations and report. Notice of the Commission's hearing~~ public hearings required under this  
17 section ~~shall be provided pursuant to Section 26.11.036 of this title. The minimum~~  
18 ~~improvements set forth in Chapter 26.27 shall be required unless specifically and individually~~  
19 ~~waived by the~~ Planning Commission or City Council as provided above.

20 Section 2. That Section 26.31.010 of the Lincoln Municipal Code as hitherto  
21 existing be and the same is hereby repealed.

1           Section 3. That this ordinance shall take effect and be in force from and after  
2 its passage and publication according to law.

Introduced by:

  

---

Approved as to Form & Legality:

---

City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2003:

---

Mayor

## Chapter 1.00

### REQUEST FOR WAIVER, PROCEDURE

#### Section 1. PURPOSE

The following design standards are adopted for the purpose of establishing the technical specifications, engineering requirements, and similar matters which property owners, subdividers, and permittees must meet when constructing or installing public and private improvements authorized or required by the various provisions of Chapter 14.75, Chapter 24.38, Title 26, and Title 27 of the Lincoln Municipal Code. Nothing contained herein shall prevent the City from approving a deviation from any of the standards as set forth herein upon a satisfactory showing that such deviation will not materially and adversely affect the public welfare and that the general intent and spirit of these design standards are preserved. (Resolution A-81230; 11-16-01)

#### Section 2. PROCEDURE

##### 2.1 Design Standards for Subdivision Regulations

Any request for a deviation from the Design Standards for Subdivision Regulations shall first be submitted to the Planning Commission for its recommendations and report shall be filed with the Planning Director. The Planning Commission shall hold at least one public hearing on the request before submitting its recommendations and report. Notice of the Commission's hearing shall be provided pursuant to Section 26.11.036 of the Lincoln Municipal Code. Upon receiving a report from the Planning Commission, the City Council, after public hearing, shall take final action upon the requested deviation. Such request shall set forth the specific modification requested and all supporting reasons and documentation as to why the modification should be granted, how the public welfare will be preserved, and why the modification will not detract from the intent and spirit of these design standards. The Director shall distribute a copy of the requested modification and the applicant's statement and accompanying data to the director of the department designated as primarily responsible for the design standards from which the modification is sought. Such director shall, within fifteen days from receipt of a copy of the requested modification, file with the Planning Director notice of his approval of the requested modification or a report stating why the modification should not be granted. Within thirty days from the filing of the request for modification, the Planning Director shall notify the applicant in writing of the recommended approval or disapproval of the request. The request for modification will then be scheduled on the Planning Commission agenda for public hearing and action as provided below.

(1) (a) If the requested modification is recommended for approval by the director of the department designated as primarily responsible for the design standards from which the modification is sought, the Planning Commission, after holding at least one public hearing on the requested modification, may modify such design standards so that the applicant may develop the land in a reasonable manner, but so that at the same time, the



public welfare and interests of the City and surrounding area are protected and the general intent and spirit of these regulations are preserved.

(b) Any aggrieved person may appeal any action of the Planning Commission to the City Council by filing a notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission. Upon receipt of the appeal by the City Council, the Council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Section 26.11.036. The City Council may, after public hearing in conformity with the provisions of this title, reverse or affirm, wholly or partially, or may modify the action of the Planning Commission appealed from.

(2) If the director of the department designated as primarily responsible for the design standards for which the modification is sought recommends denial of the requested modification, the Planning Commission shall hold a public hearing on such request and make a report and recommendation to the City Council regarding whether the modification should be granted or denied and, if approved, how the public welfare will be preserved and why the modification, if granted, will not detract from the intent and spirit of these design standards. The findings of the Commission after public hearing shall be submitted to the City Clerk within seven days from the action by the Planning Commission. After submittal of the findings of the Planning Commission to the City Clerk, the City Clerk shall cause the requested modification to be placed on the agenda of the City Council for approval by the City Council by resolution. The City Council, after holding at least one public hearing on the requested modification, may modify such design standards so that the applicant may develop the land in a reasonable manner, but so that at the same time, the public welfare and interests of the City and surrounding area are protected and the general intent and spirit of these design standards are preserved.

Notice of public hearings required under this section shall be provided pursuant to Section 26.11.036 of the Lincoln Municipal Code. The minimum improvements set forth in Chapter 26.27 of the Lincoln Municipal Code shall be required unless specifically and individually waived by the Planning Commission or City Council as provided above.

## **2.2 Design Standards for Zoning Regulations**

Any request for a deviation from the Design Standards for Zoning Regulations shall be filed with the Planning Director. ~~first be submitted to the Planning Commission for its recommendations and report. The Planning Commission shall hold at least one public hearing on the request before submitting its recommendations and report approving or denying the requested deviation.~~ Notice of the Commission's hearing shall be provided pursuant to Section 27.81.050 of the Lincoln Municipal Code. Upon receiving a report from the Planning Commission, the City Council, after public hearing, shall take final action upon the request. Such request shall set forth the specific modification requested and all supporting reasons and documentation as to why the modification should be granted, how the public welfare will be preserved, and why the modification will not detract from the intent and spirit

of these design standards. The Director shall distribute a copy of the requested modification and the applicant's statement and accompanying data to the director of the department designated as primarily responsible for the design standards from which the modification is sought. Such director shall, within fifteen days from receipt of a copy of the requested modification, file with the Planning Director notice of his approval of the requested modification or a report stating why the modification should not be granted. Within thirty days from the filing of the request for modification, the Planning Director shall notify the applicant in writing of the recommended approval or disapproval of the request. The request for modification will then be scheduled on the Planning Commission agenda for public hearing and action as provided below.

(1) (a) If the requested modification is recommended for approval by the director of the department designated as primarily responsible for the design standards from which the modification is sought, the Planning Commission, after holding at least one public hearing on the requested modification, may modify such design standards so that the applicant may develop the land in a reasonable manner, but so that at the same time, the public welfare and interests of the City and surrounding area are protected and the general intent and spirit of these regulations are preserved.

(b) Any aggrieved person may appeal any action of the Planning Commission to the City Council by filing a notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission. Upon receipt of the appeal by the City Council, the Council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Section 27.81.050. The City Council may, after public hearing in conformity with the provisions of this title, reverse or affirm, wholly or partially, or may modify the action of the Planning Commission appealed from.

(2) If the director of the department designated as primarily responsible for the design standards for which the modification is sought recommends denial of the requested modification, the Planning Commission shall hold a public hearing on such request and make a report and recommendation to the City Council regarding whether the modification should be granted or denied and, if approved, how the public welfare will be preserved and why the modification, if granted, will not detract from the intent and spirit of these design standards. The findings of the Commission after public hearing shall be submitted to the City Clerk within seven days from the action by the Planning Commission. After submittal of the findings of the Planning Commission to the City Clerk, the City Clerk shall cause the requested modification to be placed on the agenda of the City Council for approval by the City Council by resolution. The City Council, after holding at least one public hearing on the requested modification, may modify such design standards so that the applicant may develop the land in a reasonable manner, but so that at the same time, the public welfare and interests of the City and surrounding area are protected and the general intent and spirit of these design standards are preserved.

Notice of public hearings required under this section shall be provided pursuant to Section 27.81.050 of the Lincoln Municipal Code.

Notwithstanding the above, any request for a deviation of the Capitol Environs Design Standards may be approved by the Nebraska Capitol Environs Commission as provided in said design standards and any request for deviation of the Neighborhood Design Standards may be approved by the Historic Preservation Commission as provided in said design standards.

**2.3 Design Standards for Driveways Under Chapter 14.75 of the Lincoln Municipal Code**

Any request for a deviation from the Driveway Design Standards shall be submitted to the Director of Building and Safety (residential) or the Director of Public Works and Utilities (commercial). The appropriate Director shall within 15 days, file a written report on the requested deviation from design standards with the City Clerk setting forth the design standard deviation being requested and the reasons recommended for granting or denying such deviation. Upon receipt of the report, the City Clerk shall schedule said request for a deviation and report on the next reasonably available City Council agenda and the City Council, after holding a public hearing on the request for deviation, shall either approve or deny the request.

**2.4 Design Standards for On-Site Wastewater Treatment Systems Under Chapter 24.38 of the Lincoln Municipal Code**

Any request for a deviation from the Design Standards for On-Site Wastewater Treatment Systems shall be submitted to the Health Director as set forth in Chapter 4.10, "Design Standards for On-Site Wastewater Treatment Systems," Section 3, Variance.  
(Resolution A-81230; 11-16-01)